Nos. 89-1975 and 90-89

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JOSLYN MANUFACTURING COMPANY,
Petitioner,

v.

T.L. JAMES & COMPANY, INC.,
Respondent,

and

POWERLINE SUPPLY CO., INC.,
Petitioner,

v.

T.L. JAMES & COMPANY, INC.,
Respondent.

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

Nos. 89-1973 and 90-69

JOSLYN MANUFACTURING COMPANY

and

POWERLINE SUPPLY CO., INC.,

Petitioners,

v.

T.L. JAMES & COMPANY, INC.,

Respondent.

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

By Supplemental Brief filed September 10, 1990, petitioner Joslyn Manufacturing Company ("Joslyn") has called this Court's attention to the ruling of the First Circuit in *United States v. Kayser-Roth Corp., Inc.*, to be reported at 910 F.2d 24 (1st Cir. 1990). *Kayser-Roth*, however, provides no support for the instant petitions. The *Kayser-Roth* court itself distinguished the Fifth Circuit's ruling in the instant case with the observation that "in *Joslyn* there was no participation by [the] parent in activities of [the] subsidiary." *Kayser-Roth, reprinted at* Joslyn Suppl. Br. at 5a.

The Fifth Circuit ruling below affirmed the district court's finding that "Lincoln [the subsidiary] operated quite independently from James Company." 893 F.2d at 83. The court thus repeatedly framed the issue in this case as whether to impose liability on parent corporations "for the violations *of their wholly-owned subsidiaries.*" 893 F.2d at 81 (emphasis added). *See also id.* at 82 ("Joslyn urges [a construction of CERCLA] to reach parent corporations whose subsidiaries are found liable"); *id.* at 82 (CERCLA does not define "owner or operator" as "including the parent company of offending wholly-owned subsidiaries"). The *Kayser-Roth* court, therefore, found *Joslyn* not to be in conflict because "[o]n the theory of the case presently under consideration, Kayser is being held liable for its activities as an operator, not the activities of a subsidiary." *Kayser-Roth, reprinted at* Joslyn Suppl. Br. at 4a. The *Kayser-Roth* rule, then, even if correct, would not subject respondent James Company to so-called "direct" liability as an "operator."

Joslyn's petition in this Court thus presents no conflict between the lower court and any other federal court of appeals. Instead, Joslyn urges the Court to review the Fifth Circuit's failure to apply a rule of law that simply is not relevant to the factual record established in district court.

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted,

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